

REMARKS

A total of 33 claims remain in the present application. The foregoing amendments are presented in response to the Office Action mailed July 27, 2005, wherefore reconsideration of this application is requested.

By way of the above-noted amendments, the specification has been amended to correct minor typographical errors identified therein. Clearly, no new subject matter has been introduced.

Referring now to the text of the Office Action:

- claims 1-2, 10-12, 17-18 and 27-29 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over the teaching of United States Patent No. 6,363,053 (Schuster et al) in view of United States Patent No. 6,662,221 (Gonda et al.);
- claims 3-4, 6, 8-9, 14-16, 19-20, 22, 25-26 and 31-33 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over the teaching of United States Patent No. 6,363,053 (Schuster et al) in view of United States Patent No. 6,662,221 (Gonda et al.) as applied to claims 1 and 17 above, and further in view of United States Patent No. 6,765,927 (Martin) and United States Patent No. 6,519,254 (Chuah et al.); and
- claims 5, 7, 13, 21, 23-24 and 30 are objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As an initial matter, applicant appreciates the Examiner's indication of allowable subject matter in claims 5, 7, 13, 21, 23-24 and 30. The Examiners claim rejections under 35 U.S.C. §103 are believed to be traversed by the above-noted claim amendments, and further in view of the following discussion.

United States Patent No. 6,363,053 (Schuster et al) teaches a system of measurement-based conformance testing of service level agreements in networks. Thus, test traffic is transmitted through the network from a source to a remote destination. The test traffic is received by the remote destination, which then identifies the QOS

characteristics of the received test traffic, and compares the measured QOS characteristics with SLA specified QOS characteristics. (See FIG. 4 and col. 9, line 61-col. 10, line 35). According to Schuster et al:

"... The QoS characteristics may consist of measurable attributes relating to the test traffic as it was sent from the source to the destination. For example, packet loss, throughput, jitter, and latency may be measured by comparing what traffic was transmitted to what traffic was received. A packet transmission count refers to the traffic that was transmitted, while a packet receipt count refers to the traffic that was received. The source can place a timestamp on the transmitted test traffic, and the destination can place a receipt timestamp on the received test traffic in order to calculate time-based measurements. Other methods of timekeeping may also be used. Given the information described above, computation of quality of service characteristics is known by those having skill in the art. In the preferred embodiment, the user of the source has access to both the source and the destination in order to assist in identifying the quality of service characteristics. This may also assist in providing feedback to the user regarding the realized QoS characteristics" (Col 10, lines 4-22)

"If a ToS byte stamping is the method for specifying the service level, then the SLA may have a clause stating that once the ToS byte has been stamped by the user, it will not be modified thereafter. Modification of the ToS byte might result in the specified service level not being provided. Therefore, the ToS byte value may be included as one of the QoS characteristics measured as part of the present invention." (Col. 13, lines 44-51)

Schuster et al. do not teach or fairly suggest the features of the present invention. In particular, The Examiner has admitted that Schuster et al. do not teach or suggest querying a profiles database to obtain desired QoS information. Furthermore, Schuster et al. do not teach or suggest at least the step of forwarding the obtained QoS information through a VPN tunnel to the opposite end node of the tunnel.

In that respect, it will be noted that the mere fact that a reference could perform a claimed function, is not equivalent to a teaching of that claimed function. Similarly, the fact that a reference could be modified to perform a claimed function, does not render the

claimed function obvious absent any teaching or motivation for making the modification. The node 308 of Schuster FIG. 6 is connected to a network 306, and thus could send SLA and QoS Specification information to remote node 310, or could be modified to do so. However, Schuster et al do not teach that the node 308 does perform this function, and further provide no motivation for modifying the node to do so. In fact, Schuster et al teach directly away from this functionality, by teaching that the user preferably has access to both nodes. Clearly, where this condition is satisfied, sending the SLA and QoS Specification to the remote node is entirely redundant.


In embodiments in which the user does not have access to the remote node, then the person of ordinary skill in the art would have to modify the remote node 310 to send the measured QoS characteristics back to the user for analysis. The person of ordinary skill in the art would clearly reject the alternative functionality (that is, sending the SLA and QoS Specification to the remote node 310, which then analyses the measured QoS characteristics and returns the analysis results to the user) because it suffers the obvious disadvantages of increasing network traffic and resource utilization of the remote node. Both of these scenarios require modification of the remote node 310, but Schuster provides no suggestion or motivation for any such modifications.

None of the other cited references provide the missing teaching. Clearly, any packet network-based system could be modified to send QoS information to a remote node. However, none of the cited references teach such a function, nor do they provide any suggestion or motivation for making such modifications.

For at least the foregoing reasons, it is respectfully submitted that the presently claimed invention is clearly distinguishable over the teaching of the cited references, taken alone or in any combination. Thus it is believed that the present application is in condition for allowance, and early action in that respect is courteously solicited.

If any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this response, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 19-5113.

Respectfully submitted,


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